IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4609 OF 1994

Yeshwant @ Baburao
Ganapati Patil .. Petitioner.
Vs.
Pandurang Dadu Patil
and Anr. .. Respondents.

Mr.P.L.Naik for the petitioner.
Mr.P.B.Shelke i/b Mr.A.A.Kumbhakoni for
respondent nos.1 and 2.

CORAM : D.B.BHOSALE, J.

DATED : 29TH AUGUST, 2005

P.C.:

. Heard learned counsel for the parties. 2. This petition is directed against the order dated 1.10.1994 passed by the Joint Civil Judge, Junior Division, Islampur below Exhibit 34 in Regular Civil Suit No.500/1986. The petitioner-defendant had filed the application - Exhibit 34 for framing and reference of an issue as to whether he is a tenant in the suit land as required under section 85A of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short "B.T.& A.L. Act"). Mr.Naik, learned counsel for the petitioner submitted that the petitioner-defendant in his written statement at paragraph 8 has categorically pleaded that the suit lands were leased out to the petitioner and his brothers as tenants by deceased - Dadu Krishna

Patil in the year 1968-69 on sharing half crop basis by delivery of possession to them. He further submitted that the petitioner-defendant used to pay rent to the deceased - Dadu Krishna Patil and they were also paying assessment of the said lands and used to supply sugarcane to the sugar factory. It was next submitted that the learned Judge has ignored the submissions advanced on behalf of the petitioner and the material in support thereof which was prima facie sufficient to frame and refer the issue of tenancy to the tenancy authorities as required under section 85A of the B.T.& A.L. Act. I perused the written statement and in particular paragraph 8 thereof. Except vague reference made by the petitioner-defendant in the written statement he did not give further details to prima facie satisfy that his claim is genuine nor did he produce any material on record such as rent receipts in support of his claim. It is now well settled that the Civil Court under section 85A of the B.T.& A.L. Act is not under any obligation to frame and remit an issue of tenancy mechanically merely on the same being raised in the written statement, without judicial satisfaction of its necessity and justification. The Court has duty to examine the substance and refuse to frame and remit the issue of tenancy if same does not

appear to be genuine. The party ascertaining the right of tenancy in the suit land warranting to frame issue of tenancy is expected to give further details and produce some material to prima facie satisfy the court that the claim of tenancy is genuine. It is clear from the observations made by the learned Judge in the impugned order, and which were not disputed before me, that the 7 X 12 extracts produced on record did not show the name of the petitioner-defendant as a tenant in the suit plot. Mere entry in 7 X 12 extract and other documents such as assessment receipt etc. will at the most may support the claim of possession and not the claim of tenancy as tried to be contended by the learned counsel for the petitioner. The learned Judge has made reference to all the documents relied upon by the petitioner and has observed that they do not support the claim of the petitioner that his possession in the suit property was as a tenant. The facts of the present case, thus, in my opinion, leave no manner of doubt that tenancy plea is not genuine and is a part of delaying tactics. I find absolutely no infirmity, worth the name, in the impugned order warranting interference by this court under Article 227 of the Constitution of India. The writ petition, therefore, fails and is dismissed as such.

(D.B.Bhosale, J.)